IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 93 OF 2006
WITH
CHAMBER SUMMONS NO. 28 OF 2006

Dr.Navin D. Tolia. ... Petitioner.

V/s.

1. Chief Executive Officer.

2. Sarang Construction.

3. Shri Shiv Shankar Co-op. Housing Society Ltd. ... Respondents.

M.M.Vashi with Ms.Brinda D'Souza i/b.
M.P.Vashi & Associates for the petitioner.

G.D.Utangale i/b. Utangale & Co.
for respondent No.1.

Girish Kulkarni with S.B.Naik
for respondent No.3

B.N.More for the applicant.

CORAM: V.C.DAGA, J.

DATED: 1st March 2006.

P.C.:

. The petitioner is a general medical practitioner, an educated person and elite of the society. He has fled this petition under Article 226 of the Constitution of India seeking declaration that he is entitled to a shop premises admeasuring 328 sq.ft. on the ground floor of the

new building which is now nearing completion situate at Shri Shiv Shankar Co-op. Housing Society Ltd., Bhattipada Road, Bhandup (West), Mumbai- 400 078 ("suit plot" for short).

2. The petitioner claims that respondent No.2- developers have entered into an agreement dated 4th May, 2000 with him agreeing therein; to provide therein; a self-contained tenement on ownership basis having about 225 sq.ft. carpet area in a proposed new building to be constructed on the suit plot for residential purpose

3. The petitioner has further stated in the petition;

(i) that, the petitioner was occupying commercial premises and vacated the same after respondent No.2- developer having agreed to provide temporary alternate residential accommodation to him till the completion of the building so as to accommodate and rehabilitate him of the existing building;

(ii) that, as per clause-4 of the agreement, the petitioner was to shift from the existing tenement to the other tenement and permit respondent No.2- developer to construct new building as per the approved

plans by the Slum Rehabilitation Authority (SRA).

(iii) that, pursuant to the above undertaking, he has surrendered shop No.2 for being developed by respondent No.2 and shifted to shop No.6 in another premises located in the same area at Khimji Nagar, Bhattipada Road, Mumbai; from where he is presently carrying on his medical practice.

(iv) that, since respondent No.2- developers could not provide temporary alternate accommodation, the developer agreed to pay compensation at the rate of Rs.5,000/- per month for 30 months plus Rs.1,000/- towards transport charges.

(v) that, construction of the proposed building was expected to take 30 months and, therefore, an amount of Rs.1,50,000/- by way of compensation plus Rs.1,000/- by way of transport charges were paid to the petitioner (i.e.Rs.5,000/- p.m. x 30 months = Rs.1,50,000/- + Rs.1,000/- = Rs.1,51,000/-).

4. The document purported to be a receipt evidencing payment and acknowledgment of Rs.1,51,000/- is produced on record as Exh.‘C’ annexed to the petition without mentioning any date and without showing any signature thereon. It is, specifically, stated in para-8 of the petition that the said amount of Rs.1,51,000/- was paid towards compensation payable for acquiring temporary alternate accommodation.

5. A case is sought to be built up in the petition that respondent No.2 resiled from the promise given; on the contention that Rs.1,51,000/- was paid in full and final settlement of the shop as such petitioner was not entitled to claim permanent alternate accommodation in the proposed new building.

6. The petitioner has, therefore, invoked writ jurisdiction of this Court to claim shop premises admeasuring 328 sq.ft. on the ground floor of the new building which is now nearing completion.

7. On being noticed, respondent No.3- Society appeared and filed its affidavit-in-reply duly

sworn by its secretary- Mr.Rameshchandra Bhavarlal Hiren. Respondent No.3 has contended that this petition filed by the petitioner *per se* is an abuse of the process of this Court and the petitioner is not entitled to any relief from this Court. That the petitioner has not approached this Court with clean hand. He has suppressed the documents showing relinquishment of his interest in respect of shop premises in favour of one Mr.Deepak Babulal Jain, to whom the petitioner has not made party to this petition, so as to enable himself to snatch relief behind his back.

8. It is contended by respondent No.3-Society that as per the record available with the Society, the petitioner has already relinquished his right, title and interest in respect of the said shop premises in favour of Mr.Deepak Babulal Jain as far back in 2002. The respondent No.3-Society has furnished on record copies of the notarised documents, i.e., deed of assignment; general power of attorney and affidavit-cum-declaration executed by the petitioner in favour of Mr.Deepak Kumar Babulal Jain all dated 28th March, 2002. The Society has also furnished a copy of affidavit dated 3rd April, 2002 executed

jointly by the petitioner and Mr.Jain for "no objection" in respect of transfer of electric meter in favour of Mr.Jain provided in the said shop premises. It is stated that pursuant to this, the M.S.E.B. has transferred the meter in the name of Mr.Deepak Jain. Zerox copy of the electricity bill dated 28th January, 2004 in respect of shop No.2, Gavad Sadan, Bhattipada Rd, Bhandup standing in the name of Mr.Deepak B. Jain is also produced on record at Exh.B-1 with the affidavit in reply. The respondent No.3- Society has also produced two rent receipts at Exh.C to its affidavit in respect of said shop No.2 situated in Gavad Sadan showing his name as tenant in respect of the said premises. A Shops and Establishment Registration Certificate under No.S-I/012670 dated 21st June, 2003 issued by Brihanmumbai Municipal Corporation standing in the name of his establishment i.e. M/s.Deepak Pooja Bhandar, opened for sale of worship articles is also produced on record along with affidavit at Exh.C-1. Copies of correspondence between Mr.Jain and Society are produced at Exh.‘D’ with the affidavit in reply.

9. The respondent No.3- Society contended

that the alleged receipt relied upon by the petitioner is one and the same if compared with the receipt on page-5 of the deed of assignment dated 28th March, 2002 executed by the petitioner and it forms part and parcel of the said document. The respondent No.3- Society has contended that Mr.Deepak Jain is in continuous use, occupation and possession of the said shop premises since 2002 and doing his business from the said shop.

10. According to respondent No.3- Society, the petitioner, who after relinquishing his right is practising in the same locality, has falsely contended that he was not aware of the progress of redevelopment of Gavad Sadan and to show his unawareness he had written a letter to respondent No.3- Society in October, 2005. The petitioner after selling his shop premises in March, 2002 was sitting quietly till the shop premises is nearing to complete and filed this petition with ulterior motive. The respondent No.3 has pointed out that the petitioner, in his letter addressed to the Society (which is produced by him at Exh.‘E’to the petition), has stated that he did not appoint anybody as his representative. According to respondent No.3, this clearly indicates that the

petitioner was aware of relinquishment of his rights in respect of said shop premises. It is further stated that the Society has adequately replied to the letters of the petitioner dated 24th October, 2005 and 11th November, 2005 vide its letter dated 19th November, 2005 informing the petitioner that the demand made by him was untenable. The said letter is produced on record by the petitioner himself at Exh.'G' to his petition. Thus, respondent No.3- Society pleaded that the petitioner has suppressed material facts from this Court as such he is not entitled to any reliefs from this Court.

11. Mr.Deepak Kumar Babulal Jain, claiming to be in use, occupation and possession of the said shop premises has filed chamber summons in this petition being Chamber Summons No.28 of 2006 for impleading him as party respondent in this petition.

12. Considering the averments made by the petitioner in his petition with that of averments made by respondent No.3- Society in its affidavit in reply, the chamber summons is allowed. Petitioner is directed to join applicant-

Mr.Deepak Kumar Babulal Jain as party respondent No.4 to the petition forthwith.

13. Chamber summons is made absolute in terms of this order with no order as to costs.

14. Mr.Deepak Babulal Jain has filed affidavit in support of his chamber summons. He has stated that previously the petitioner was in exclusive use, possession and occupation of shop No.2 as tenant of the landlords Shri Pratap Shankar Gavad and others. In the year 2002, petitioner wanted to assign his tenancy right with the permission of the landlords, if some good consideration was offered to him. Accordingly, the Mr.Jain claims to have approached the petitioner through broker one Shri Deepak Mohanlal Jain and after discussions and negotiations the deal was struck.

15. The petitioner, pursuant to the terms of deal under his own signature, executed deed of assignment; indemnity bond; affidavit-cum-declaration and irrevocable power of attorney and agreed to assign thereunder all rights including his tenancy right in the said premises in favour of Mr.Jain with the consent of the landlords.

16. The consideration for the above deal was agreed in the sum of Rs.14,00,000/- (i.e. Rs.1,51,000/- + Rs.12,49,000/-). Petitioner, accordingly, executed various documents and received consideration of Rs.1,51,000/- falling to his share and transferred all his right, title and interest in favour of Shri Deepak Kumar Babulal Jain. Copy of the deed of assignment dated 22nd March, 2002 along with receipt attached thereto is produced on record as Exh.‘A’ annexed to the affidavit.

17. The deponent Mr.Jain has further stated on oath that in addition to deed of assignment certain other documents were also executed including NOC for transferring the electricity meter. The said documents were certified by Mr.Raman P. Rajput, Advocate, whereby petitioner transferred all his right, title and interest in his favour. Those documents were also produced on record along with affidavit as Exh.‘C’; Exh.‘D’ and Exh.‘E’ respectively.

18. It is further stated in the affidavit that on 29th March, 2002, the landlords have also given

a letter dated 29th March, 2002 to Shri Deepak Kumar Jain accepting him as a monthly tenant in place of the petitioner with respect of shop No.2, Gavad Sadan, Bhattipada Road, Bhandup (West), Mumbai- 78. Mr.Jain was also permitted to carry out internal tenable repairs and to fix main out shutter to the shop. That is how Shri Deepak Kumar Jain claims to have entered in the shoes of the original tenant, the petitioner herein; and claims to have became tenant of the original landlords. Shri Jain has also written a letter dated 25th March, 2002 to the society informing that he has purchased the suit premises from the petitioner- Dr.N.D.Tolia.

19. With the aforesaid material on record along with deed of assignment, petition was heard for admission.

20. A specific question was put to the learned counsel appearing for the petitioner, during the course of hearing, as to whether Exh.‘C’ annexed to the petition purported to be a receipt evidencing payment of Rs.1,51,000/- is a complete document by itself or is it a part of some other document.

21. The learned counsel for the petitioner could not explain. Obviously, Exh.‘C’, purported to be a receipt, carries figure "-5-" as page number on the top of the page. This by itself is sufficient to demonstrate that this is a part of some other document.

22. The learned counsel appearing for respondent No.1, immediately, rose and pointed out that this receipt (Exh.‘C’) is, in fact, a last page of the deed of assignment dated 22nd March, 2002 executed by the petitioner himself in favour of one Shri Deepak Kumar Jain; copy of which is produced on record. Having compared with the documents on record, it is clear that the petitioner has produced part of the document as Exh.‘C’ removing earlier four pages of the document, namely, the deed of assignment.

23. The deed of assignment, if read, it gives a clear picture that the tenancy rights were assigned by the petitioner in favour of one Shri Deepak Kumar Jain under the said deed of assignment. The petitioner while producing Exh.‘C’ appears to have erased his own signature

along with signature of the witness. He has also gone to the extent of erasing round seal put by the Notary Public and produced a tailored document before the Court and tried to build his case on this fabricated document.

24. The petitioner not only produced a tailored and fabricated document before this Court but went to the extent of building an argument making the said receipt (Exh.'C') as foundation of his case to contend that the said receipt represents the payment of rent in the sum of Rs.1,50,000/- (i.e. for 30 months @ Rs.5,000/- p.m.) plus Rs.1,000/- towards transportation charges.

25. If the averments made by the petitioner in para-8 in the light of the deed of assignment and the explanation offered in the affidavit filed by Shri Dilip Kumar Babulal Jain is considered, it is clear that the petitioner tried to make out a false case with full knowledge that the case sought to be canvassed by him is false. In these circumstances, in my opinion, the petitioner has not approached this Court with clean hands. The petition is, thus, liable to be thrown out at this

stage of the litigation itself with exemplary costs.

26. The Apex Court in the case of **S.P.Chengalvaraya Naidu v. Jagannath**, AIR 1994 SC 853 has observed as under:

> " The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

27. The petitioner has tried his best to mislead this Court. He tried to tailor and manufacture a document to build his case on false premise. He has, thus, no right to invoke writ jurisdiction of this Court.

28. I deem it fit to place on record that after having noticed these illegalities and after having put the same to Mr.Vashi, learned counsel

for the petitioner, he could not offer any explanation except making adjournment to take instructions in the matter. Needless to mention that advance copy of the affidavit was served on the petitioner. Prior to this date adjournments were granted at the request of the petitioner. The petitioner was also given an option to withdraw this petition, which his counsel refused to exercise; after taking instruction from the petitioner; who was present in person in the Court during the course of hearing.

29. In the above view of the matter, I have no option but to dismiss this petition holding that the petitioner is guilty of playing fraud on this Court as well as on the opposite party.

30. In the result, petition is dismissed in limine with costs quantified in the sum of Rs.25,000/- to be paid to the High Court Bar Libraries, Original and Appellate Side in the ratio of 50 : 50.

(V.C.DAGA, J.)

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for the petitioner.

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for the respondents.

CORAM: V.C.DAGA, J.

DATED: 1st March 2006.

P.C.:

. Considering the averments made by the petitioner in his petition with that of averments made by respondent No.3- Society in its affidavit in reply, the chamber summons is allowed. Petitioner is directed to join applicant-Mr.Deepak Kumar Babulal Jain as party respondent No.4 to the petition forthwith.

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